

91-7804

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

SHELDON B. BUFFERD, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT

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March 30, 1992

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QUESTION PRESENTED

Whether the statute of limitations with respect to items appearing on a Form 1120S income tax return of a subchapter S corporation is to be applied at the corporate level as was decided by the United States Court of Appeals for the Ninth Circuit in Kelley v. Commissioner, T.C. Memo 1986-405, rev'd 877 F.2d 756 (9th Cir. 1989)?

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

SHELDON B. BUFFERD, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner Sheldon B. Bufferd respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit, entered in the above-entitled proceeding on January 3, 1992.

OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit is reported at 952 F.2d 675 (2nd Cir. 1992) and is reprinted in the appendix hereto, p. 1a, infra.

The opinion of the United States Tax Court is reported at 61 T.C.M. (CCH) 2410 (1991), and is reprinted in the appendix hereto, p. 6a, infra.

The statutory Notice of Deficiency issued by the Commissioner of Internal Revenue for Petitioners' 1979 joint federal income tax return is reprinted in the appendix hereto, p. 12a, infra.

By reason of a settlement between Phyllis Bufferd and Respondent, she is no longer a party in interest in this case.

JURISDICTION

Petitioner brought an action in the United States Tax Court for the redetermination of the deficiency imposed by the Respondent. The Tax Court entered judgment in favor of the Respondent on May 14, 1991.

The Court of Appeals for the Second Circuit affirmed the Tax Court's decision on January 3, 1992. No petition for rehearing was sought.

The jurisdiction of this Court to review the judgment of the Second Circuit is invoked under 28 U.S.C. Section 1254(1).

STATUTES INVOLVED

Internal Revenue Code of 1954²

SEC. 6012. PERSONS REQUIRED TO MAKE RETURNS OF INCOME.

(a) GENERAL RULE. -- Returns with respect to income taxes under subtitle A shall be made by the following:

* * * * *

(2) Every corporation subject to taxation under subtitle A;

* * * * *

SEC. 6037 RETURN OF S CORPORATION.

(a) In general. -- Every S corporation shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, the names and addresses of all persons owning stock in the corporation at any

²Because the taxable year in question was prior to the enactment of the Internal Revenue Code of 1986, all non-jurisdictional references are to the Internal Revenue Code of 1954 (Code).

time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, the date of each such distribution, each shareholder's pro rata share of each item of the corporation for the taxable year, and such other information, for the purpose of carrying out the provisions of subchapter S of chapter 1, as the Secretary may by forms and regulations prescribe. Any return filed pursuant to this section shall, for purposes of chapter 66 (relating to limitations), be treated as a return filed by the corporation under section 6012.

* * * * *

SEC. 6501. - LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) General rule. -- Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

STATEMENT OF THE CASE

All the facts of this case were stipulated by the parties and are contained in Documents 23 and 24 of the record. The Petitioner was a shareholder of a S corporation for his taxable year 1979 and claimed losses and investment tax credits incurred at the S

corporation level on his timely filed 1979 joint federal income tax return. The Respondent obtained an extension of the statute of limitations for the Petitioner's joint federal income tax return, but did not obtain such an extension for the applicable timely filed S corporation income tax return.

By Notice of Deficiency dated December 4, 1987, the Respondent disallowed, inter alia, the Petitioner's claimed 1979 loss and investment credit attributable to the S corporation for its taxable period December 26, 1978 through November 30, 1979.

The Petitioner invoked the jurisdiction of the United States Tax Court under sections 6213(a) and 6214(a) of the Internal Revenue Code of 1986 challenging the statutory Notice of Deficiency issued by the Respondent. Judge Meade Whitaker entered a decision in favor of the Respondent, reported at 61 T.C.M. (CCH) 2410 (1991), in the case on May 14, 1991. Judge Whitaker decided that the Respondent need only obtain an extension of the period of limitations for an individual shareholder's income tax return to make adjustments on that return with respect to S corporation items of income or loss, even though the three-year statute of limitations period for the S corporation income tax return had expired.

The Petitioner then invoked the United States Court of Appeals for the Second Circuit's jurisdiction under sections 7482(a)(1) and (b)(1)(a) of the Internal Revenue Code of 1986. The Second Circuit affirmed the Tax Court and, relying on its decision in Siben v. Commissioner, 930 F.2d 1034 (2nd Cir. 1991), cert. denied, 112 S. Ct. 429 (1991), held "that the relevant return for purposes of determining the statute of limitations is the return of the

taxpayer against whom the tax is sought." Bufferd v. Commissioner, 952 F.2d 675, 678 (2nd Cir. 1992). The Second Circuit reasoned that Section 6501(a) of the Code (which provides the limitations period for the assessment of taxes) only bars the assessment of tax on an entity more than three years after the filing of the entity's return. It "does not bar adjustments to an entity's return that do not result in a tax assessment on that entity." Bufferd, 952 F.2d at 677. In so holding, the Second Circuit rejected the Petitioner's policy argument that, given the fact that the S corporation could destroy its records after the statute of limitations expires, a taxpayer would be unable to defend itself against a deficiency imposed by the Respondent after the statute of limitations had expired. The Court felt that taxpayers can take protective steps to ensure that the S corporation doesn't destroy its records.

REASONS FOR GRANTING THE WRIT

I.

The Second Circuit's holding that separate waivers of the statute of limitations are not required for both a S corporation and its shareholders is in conflict with the decisions of other Circuits and subverts the separate-entity doctrine of Moline.

In a recently decided case, the Eleventh Circuit agreed with the Second Circuit that separate waivers of the statute of limitations are not required for both a S corporation and its shareholders. Fehlhaber v. Commissioner, 94 T.C. No. 54 (1990), aff'd 954 F.2d 653 (11th Cir. 1992).

In conflict with these decisions is Kelley v. Commissioner, T.C. Memo 1986-405, rev'd 877 F.2d 756 (9th Cir. 1989). In that

case, the Ninth Circuit reversed the Tax Court's decision and held that the "the IRS may not adjust a shareholder's return based on an adjustment to an S corporation's return when the statute of limitations has run on the S corporation's return." 877 F.2d at 759.

The Eight Circuit cited the Kelley decision in Fendell v. Commissioner, 906 F.2d 362 (8th Cir. 1990), and held that "the expiration of the limitations period for auditing the trust's returns barred adjustment of the amount of distributions claimed on the beneficiaries' individual returns." According to the Fendell court, the Ninth Circuit Kelley case and similar cases such as Illinois Masonic Home v. Commissioner, 93 T.C. 145 (1989) and Boatmen's First Nat'l Bank v. United States, 705 F. Supp. 1407 (W.D. Mo. 1988) "embody the principle that in order for the Commissioner to adjust tax liability, he must be able to do so at the source of the income . . . [and] will be prevented from doing so at the point where the income is distributed." Fendell, 906 F.2d at 364. Since S corporation shareholders and the S corporation, like beneficiaries and the trust, are separate taxable entities, no adjustments on the shareholders' individual returns can be made with respect to S corporation items if the S corporation's limitations period has expired.

In addition to creating conflict with other Circuits, the decision below subverts the separate-entity doctrine of Moline.

As stated by this Court in Moline Properties, Inc. v. Comm'r., 319 U.S. 436 (1943):

The doctrine of corporate entity fills a useful purpose in business life . . . so long as that purpose is the equivalent of business

activity or is followed by the carrying on of business by the corporation, the corporation remains a separate taxable entity. 319 U.S. at 438.

However, despite this Court's recently expressed concern "that the separate-entity doctrine of Moline not be subverted," Commissioner v. Bollinger, 485 U.S. 340 (1988), the decision below, in fact, disregards the S corporation's existence as distinct from that of its shareholders.

Section 6037(a) of the Code requires a S corporation to file a return. The section goes on to say that the return will be considered a corporate return when determining the applicable statutory period of assessment.

Section 6012(a)(2) of the Code also requires every corporation subject to income taxes under subtitle A to file a return. Reading section 6012(a)(2) in conjunction with section 6037(a), the return filed by a S corporation must be treated as an income tax return of the corporation for the purpose of establishing the appropriate statute of limitations period.

Section 6501(a) of the Code contains the statute of limitations rule for examination and assessment of a tax on a corporate return. It states in pertinent part: "Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed" By holding that a S corporation's shareholder's tax return is the relevant return with regard to items that appear on the S corporation's income tax return, the Second Circuit disregards the S corporation's income tax return. The conflict between Moline and the instant case is thus apparent and deserves

this Court's attention.

The Second Circuit has created a precedent which conflicts with decisions of this Court and other circuits and is likely to create further litigation and confusion in circuits yet to resolve this issue.

II.

The decision below that an adjustment made to a S corporation's return, after the statute of limitations has run, can form the basis for an adjustment to the S corporation's shareholders' returns raises important and unresolved problems which are likely to generate further litigation.

The Kelley decision is predicated largely on the concept of finality. As the Kelley court stated, "the statute of limitations exists in part so that after some time persons can be confident that their affairs are closed and that they can dispose of old records." Kelley, 877 F.2d at 758. If a shareholder cannot be confident that the statute of limitations has run on the S corporation's income tax return, the shareholder cannot be confident that his individual return is final for that particular year with respect to S corporation items. Such a result negates the concept of finality because shareholders would not know when "their affairs are closed." Kelley, 877 F.2d at 758.

The Internal Revenue Service is also entitled to finality. If the precedent set below is allowed to stand, it could impact on the Service's ability to collect revenue. If, for example, an S corporation sought to amend its income tax return to reduce reported income or increase its loss after three years from filing its return, the Service could not bar the amendment's effect on

shareholders because the limitations period had run for the corporation. As long as a shareholder's return remains open, an individual shareholder, like the Appellant, could amend his individual return to reduce income or claim increased losses despite the Service's inability to examine the S corporation's income tax return. Although this result is absurd, it is a logical outcome of the decision in the case below.

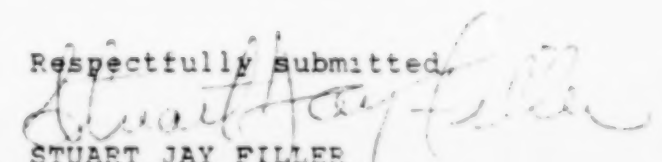
Finally, the Petitioner notes the existence of other litigation involving this issue (Brody v. Commissioner, 61 T.C.M. (CCH) 1993, appeal docketed, No. 91-4497 (Fifth Circuit, June 17, 1991)). Summary judgment on this issue was entered in Aries v. Commissioner, 61 T.C.M. (CCH) 1769 (1991), interlocutory appeal denied, No. 3827-89, 3841-89 (Tax Court, May 22, 1991).

Lower courts thus need guidance from this Court on the question of whether an adjustment made to a S corporation's return, after the statute of limitations has run, can form the basis for an adjustment to the S corporation's shareholders' returns.

CONCLUSION

For the reasons stated above, this petition for certiorari should be granted.

Respectfully submitted,


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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 214—August Term, 1991

(Argued September 25, 1991 Decided January 3, 1992)

Docket No. 91-4099

SHELDON B. BUFFERD; PHYLLIS BUFFERD,
Petitioners-Appellants,

—v.—

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Before:

MESKILL, WINTER and ALTIMARI,
Circuit Judges.

Appeal from a decision by the United States Tax Court determining that the Commissioner of Internal Revenue timely assessed a deficiency on petitioner's individual income tax payment arising from his distributive share in the income of an S corporation.

Affirmed.

STUART J. FILLER, University of Bridgeport School of Law Tax Clinic, Bridgeport, CT (Toni Robinson, Joseph A. Kubic, Craig H. Rein, University of Bridgeport School of Law Tax Clinic, Bridgeport, CT, of counsel), *for Appellants*.

JANET K. JONES, Tax Division, Department of Justice, Washington, D.C. (Shirley D. Peterson, Assistant Attorney General, Gary R. Allen, Robert S. Pomerance, Tax Division, Department of Justice, Washington, D.C., of counsel), *for Appellee*.

MESKILL, *Circuit Judge*:

Sheldon Bufferd appeals from a decision of the United States Tax Court imposing a tax deficiency on him for the year 1979. The sole issue on appeal is whether the Commissioner of Internal Revenue (Commissioner) timely assessed the deficiency. The tax court held that the Commissioner was not barred by the limitation provision of the Internal Revenue Code.

We affirm.

BACKGROUND

In 1979 Sheldon B. Bufferd was a shareholder in Compo Financial Services, Inc., an electing small business corporation under Subchapter S of the Internal Revenue Code, 26 U.S.C. § 1371 *et seq.* (1954 Act) (unless otherwise noted, all references are to the Internal Revenue Code of 1954 as amended and effective during the years

in issue). Bufferd and Compo were two of several partners in a venture known as Printer's Associates (Printer's). Printer's reported substantial losses in 1979 arising from a failed investment in a new technology. Compo reported a loss from the Printer's partnership on its 1979 small business corporation income tax return. Bufferd and his wife filed a joint income tax return in 1979. In that return they reported a loss from the Printer's partnership. The Bufferds also reported their distributive share of Compo's loss on their 1979 return.

In March 1983 the Bufferds and a representative of the Commissioner executed a form entitled "Special Consent to Extend the Time to Assess Tax" (Form 872-A). The document provided that, regardless of the statute of limitations, the Commissioner could assess income tax due on the Bufferds' 1979 return at any time prior to ninety days after revocation of the consent by the Bufferds. The document contained a proviso limiting any such deficiency assessment to that resulting from adjustments to the Bufferds' distributive share from, basis in or sale of any interest in "any partnership (or any organization treated by the taxpayer as a partnership on the taxpayer's return)." The Bufferds never revoked the consent to the extension of time. Compo never assented to an extension of time to assess the tax due for 1979.

The Commissioner subsequently determined that the losses reported by Printer's were improper. The Commissioner thus made adjustments to the Bufferds' 1979 return by disallowing the partnership loss. The Commissioner also adjusted Compo's return to reflect the disallowance of Printer's losses. Bufferd's distributive share from Compo was thus altered from a \$500 loss to a \$1,418 gain. Bufferd's wife settled separately with the Commissioner following her divorce from petitioner.

Bufferd ultimately agreed to the deficiency assessed by the Commissioner to the extent of the disallowance of the direct partnership loss. Bufferd argued, however, that the Commissioner could not assess a deficiency with regard to the Compo adjustment because the statute of limitations had run with respect to Compo's tax liability.

The tax court determined that the Form 872-A executed by petitioner defeated Bufferd's statute of limitations defense. Thus the tax court ordered Bufferd to pay the full amount of the deficiency. Bufferd appeals that decision.

DISCUSSION

Bufferd contends that the Commissioner could not properly have made any adjustments to his return that result from adjustments to Compo's return because the limitations period with respect to Compo had expired and no extension of that period had been executed. The Commissioner urges that we affirm the tax court, which held that the relevant limitations period for purposes of assessing the tax due on the Bufferds' 1979 joint return was the period directly associated with that return. We agree with the Commissioner and the tax court on this point.

26 U.S.C. § 6501(a) provides the limitations period for the assessment of taxes. That section provides in pertinent part that "the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed." An exception to this limitations period is provided where the Secretary and the taxpayer consent in writing to an extension of time. 26 U.S.C. § 6501(c)(4).

At the heart of this dispute is the meaning of the word "return" in section 6501(a). The Commissioner claims

that that term refers to the return of the taxpayer against whom the Commissioner has imposed the deficiency. Bufferd claims that, in the context of a gain or loss resulting from an adjustment to the return of an S corporation, the return of the S corporation is the relevant return.

We recently addressed the meaning of "return" in section 6501(a). In *Siben v. C.I.R.*, 930 F.2d 1034 (2d Cir. 1991), *cert. denied*, 112 S.Ct. 429 (1991), the Commissioner had made an adjustment to an individual partner's return based on alterations to the partnership return. The taxpayer argued that because the statute of limitations had run with respect to the partnership, the Commissioner was barred from adjusting the individual partner's distributive share of the partnership's income. We stated that

it appears to us that the "return" that starts the running of the limitations period at issue is that of the taxpayer whose liability is being assessed, and not that of a third person or entity whose return might also report the transaction that gives rise to the liability. On this reading, the return referred to in § 6501(a) would thus be the individual's income tax return for an assessment of individual income tax.

Id. at 1035.

Bufferd argues that because the "third person or entity" at issue here is an S corporation rather than a partnership, *Siben* is inapplicable. Bufferd points to 26 U.S.C. § 6037, which states in pertinent part that a return filed by an S corporation "shall, for purposes of chapter 66, (relating to limitations) [and containing section 6501(a)], be treated as a return filed by the corporation under section 6012." The statute that requires partnerships to file returns, 26 U.S.C. § 6031, has no similar provision relating to the effect of those returns on the limitations period.

• Bufferd urges that in interpreting the effect of section 6037 on section 6501(a) we adopt the reasoning of *Kelley v. C.I.R.*, 877 F.2d 756 (9th Cir. 1989). In *Kelley* the Ninth Circuit held that those sections bar the Commissioner from adjusting a shareholder's return based on an adjustment to an S corporation's return when the limitations period has run on the S corporation's return. *Id.* at 759. The court noted that section 6501 barred any adjustments to corporate returns after the limitations period. Section 6037 mandates that S corporation returns be treated as corporate returns for purposes of limitations. Therefore, reasoned the *Kelley* Court, returns of S corporations could not be adjusted in any way after the limitations period had run.

We disagree with *Kelley*'s interpretation of section 6501(a). That section bars only the assessment of a tax on an entity more than three years after the entity has filed a return. Section 6501(a) does not bar adjustments to an entity's return that do not result in a tax assessment on that entity. An adjustment to the return of an S corporation that does not impose tax liability on that S corporation is not barred by sections 6501(a) and 6037.

Bufferd argues that if we do not interpret section 6037 as he proposes we will effectively eliminate that section from the statute. We disagree. Section 6037 provides the limitations period for organizations that file returns as S corporations but are nonetheless required to pay some tax on the organization's income. For example, if an organization was not entitled to elect to become an S corporation, any tax on the organization's income as a normal corporation must be assessed within three years of the filing of the S corporation return. *Fehlhaber v. C.I.R.*, 94 F.3d 863 (1990) (quoting S. Rep. No. 1983, 85th Cong. 2nd Sess. (1958), 1958-3 C.B. 922, 1147). In this respect

the final phrase in section 6037 performs for S corporations a function similar to that performed by section 6501(g) for trusts, exempt organizations and Domestic International Sales Corporations.

Moreover, valid S corporations on occasion are required to pay tax on certain types of income. *See* 26 U.S.C. § 1374 (imposing tax on certain capital gains by S corporations). Section 6037 provides that in such cases the filing of an S corporation return triggers the limitations period for imposition of this direct tax against the S corporation. Section 6037 therefore retains ample meaning even bereft of the interpretation proposed by Bufferd.

Bufferd also argues that if the limitations period of the S corporation does not govern the assessment of tax on a shareholder's distributive share derived from that S corporation, the taxpayer will be unable to defend itself effectively against any deficiency imposed by the Commissioner. Bufferd argues that the S corporation could destroy the books and records necessary for such a defense after its limitations period had passed. In *Siben* we held that "a taxpayer can generally protect himself by taking steps to ensure that the partnership preserves records needed to support the partnership item claimed on the individual partner's return." 930 F.2d at 1037. We believe that a shareholder of an S corporation can take similar protective steps with regard to the S corporation records needed to support the S corporation items claimed on the shareholder's return.

We find the words of section 6501(a) clear and unambiguous. Barring an exception, if the Commissioner wishes to assess a tax on an entity, he must do so within three years after the filing by that entity of the return on which the tax should have been reported. We do not

believe that section 6037 can fairly be read in the manner proposed by Bufferd.

The relevant return for purposes of section 6501(a) is Bufferd's joint return rather than Compo's S corporation return. The Form 872-A executed in March 1983 by the Bufferds gave the Commissioner the power to assess income tax due on the Bufferds' 1979 return any time prior to ninety days after Bufferd terminated the consent.

he printed form also contains a typewritten proviso that limits any deficiency assessment to that resulting from adjustment to the Bufferds' distributive share from, basis in, or sale of any interest in "any partnership (or any organization treated by the taxpayer as a partnership on the taxpayer's return)."¹

Compo Financial Services, Incorporated, was not a partnership and Bufferd did not treat it as a partnership on his 1979 joint return. The extension granted the Commissioner by Bufferd does not by its terms reach the assessment of taxes resulting from an adjustment to Bufferd's distributive share from Compo.

¹ The entire proviso states:

(5) The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (a) the taxpayer's distributive share of any item of income, gain, loss, deduction, or credit of, or distribution from any partnership (or any organization treated by the taxpayer as a partnership on the taxpayer's tax return); (b) the tax basis of the taxpayer's interest(s) in such partnership(s) or organization(s) treated by the taxpayer as a partnership; and (c) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of taxpayer's interest in such partnership(s) or organization(s) treated by the taxpayer as a partnership; including any consequential changes to other items based on such adjustment.

(emphasis added).

However, Bufferd did not raise this theory before the tax court. In fact, Bufferd arguably waived this argument through the stipulations filed before the tax court. Because of these considerations, and because Bufferd did not press this argument on appeal, even after a request for additional briefing on the issue by this Court, we do not reach that issue. We consider the extension applicable to the income at issue here.

CONCLUSION

We agree with the tax court that the relevant return for purposes of determining the statute of limitations is the return of the taxpayer against whom the tax is sought. We therefore affirm the judgment of the tax court.

MEMORANDUM FINDINGS OF FACT AND OPINION

WHITAKER, Judge: Respondent determined deficiencies and additions to tax in petitioners' Federal income tax as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Addition to Tax Section 6653(a)</u>
1975	\$ 3,069	\$153.45
1976	3,704	185.20
1977	6,291	314.55
1978	13,859	692.95
1979	12,555	627.75

After concessions, the sole issue for decision is whether the statute of limitations relating to the assessment of an income tax deficiency determined against the shareholder of a subchapter S corporation is to be measured at the corporate level or at the shareholder level. We are bound to follow our Court-reviewed opinion in Fehlhaber v. Commissioner, 94 T.C. 863 (1990). Therefore, we hold that the notice of deficiency mailed to petitioners on December 4, 1987, was timely under section 6501(a) and the assessment is not barred by the statute of limitations.

FINDINGS OF FACT

This case was submitted for decision under Rule 122. The stipulations and attached exhibits are incorporated herein by this reference.

¹ Unless otherwise noted, all section references are to the Internal Revenue Code of 1954 as amended and in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Petitioner, Sheldon B. Bufferd, resided in Fairfield, Connecticut, at the time the petition was filed. Petitioner, Phyllis Bufferd, resided in Westport, Connecticut, at the time the petition was filed.

The concessions in this case are as follows: (1) For the 1978 taxable year, petitioner is entitled to an ordinary deduction in the amount of \$20,000 which is equal to his cash investment in Printer Associates; (2) petitioner is not entitled to any other losses or credits attributable to Printer Associates for any year; (3) Mrs. Bufferd is not liable for any deficiencies for the taxable years 1975 through 1979 pursuant to section 6013(e); (4) Mrs. Bufferd is not liable for additions to tax for the taxable years 1975 through 1979 under sections 6653(a) and 6659 pursuant to section 6013(e); (5) Mrs. Bufferd is not liable for the increased rate of interest under section 6621(c) for the taxable years 1975 through 1979 pursuant to section 6013(e); (6) Mr. Bufferd is not liable for additions to tax for the taxable years 1975 through 1979 under sections 6653(a) and 6659, and (7) Mr. Bufferd is liable for the increased rate of interest under section 6621(c) for the taxable years 1975 through 1979.

The facts that are relevant to the statute of limitation issue remaining in this case are as follows. In 1979 Mr. Bufferd (hereinafter petitioner) was a shareholder in Compo Financial Services, Ltd. (Compo). In 1979 Compo was an electing small business corporation within the meaning of section 1371(a).

Compo timely filed a U.S. Small Business Corporation Income Tax Return (Form 1120S) for the taxable period December 26, 1978, through November 30, 1979, on February 1, 1980. Compo did not extend the statute of limitations for assessment of taxes as provided under section 6501(c)(4) with respect to its taxable period ended November 30, 1979. On December 21, 1983, petitioner, in his capacity as secretary/treasurer of Compo executed a Special Consent to Extend the Time to Assess Tax (Form 872-A) with respect to the taxable period ended November 30, 1980. On December 15, 1987, respondent executed a Notice of Termination of Special Consent to Extend the Time to Assess Tax (Form 872-T) with respect to Form 872-A dated July 22, 1985, executed by the parties with respect to Compo's taxable period ended November 30, 1982.

On April 15, 1980, petitioners filed their Federal income tax return for the 1979 taxable year. Petitioners reported their income and deductions for the 1979 taxable year on the basis of cash receipts and disbursements. On petitioners' 1979 tax return, they claimed an ordinary loss in the total amount of \$11,550 (\$11,050 with respect to Printer Associates and \$500 with respect to Compo). On petitioners' 1979 tax return, they also claimed an investment credit with respect to Compo in the amount of \$8,023.

On March 7, 1983, petitioners timely executed a Form 872-A for their 1979 taxable year. Respondent executed Form 872-A on

March 15, 1983. Neither petitioners nor respondent filed a Form 872-T with respect to petitioners' 1979 taxable year.

In the statutory notice of deficiency dated December 4, 1987, respondent disallowed petitioners' claimed 1979 loss and investment credit attributable to Compo for its taxable period December 26, 1978, through November 30, 1979. Respondent further determined that petitioner's distributive share of Compo income in 1979 was \$1,418, resulting in a total adjustment with respect to Compo in the amount of \$1,918. The statutory notice was timely sent to petitioners prior to the expiration of the 3-year period for assessment with respect to petitioners' 1979 tax return, as duly and timely extended under Form 872-A. The statutory notice was issued to petitioners more than 3 years after the filing of Compo's Form 1120S for the taxable period ended November 30, 1979, for which an extension of the assessment period was not executed by the corporation.

OPINION

This issue was previously considered by this Court in Kelley v. Commissioner, T.C. Memo. 1986-405. In Kelley, this Court held that the statute of limitations on assessment of a deficiency resulting from the disallowance of a loss flow-through from a subchapter S corporation is measured with reference to the individual shareholder's income tax return, rather than the corporation's information return. This Court's decision in Kelley was subsequently reversed in Kelly v. Commissioner, 877 F.2d 756

(9th Cir. 1989). In Fehlhaber v. Commissioner, 94 T.C. 863 (1990), we reconsidered our opinion in Kelley, in view of the reversal by the United States Court of Appeals for the Ninth Circuit. In Fehlhaber, we concluded that our holding in Kelley was correct and, therefore, we would adhere to our conclusion reached in Kelley. In Fehlhaber, we respectfully declined to follow the decision of the Court of Appeals for the Ninth Circuit on this issue where the appeal lies to another circuit. See Golsen v. Commissioner, 54 T.C. 742, 756-757 (1970), affd. 445 F.2d 985 (10th Cir. 1971). The appeal in this case lies in the Second Circuit. Therefore, we are bound to follow our Court-reviewed opinion in Fehlhaber. Accordingly, we hold that the notice of deficiency mailed to petitioners on December 4, 1987, was timely under section 6501(a) and, therefore, the assessment is not barred by the statute of limitations.

Decision will be entered
under Rule 155.

Date: DEC 04 1987

S.S.N or E. No.: 049-32-7803
Tax Year Ended and Deficiency:

See
Attached
Form
4089

Sheldon B. Bufferd & Phyllis Bufferd
11 Oak Lane
Weston, CT 06880

Person to Contact: Edward K. Clark
Telephone No.: (803) 433-0749

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this deficiency in court before making any payment, you have 90 days from the above mailing date of this letter (150 days if addressed to you outside of the United States) to file a petition with the United States Tax Court for a redetermination of the deficiency. The petition should be filed with the United States Tax Court, 400 Second Street NW., Washington, D.C. 20217, and the copy of this letter should be attached to the petition. The time in which you must file a petition with the Court (90 or 150 days as the case may be) is fixed by law and the Court cannot consider your case if your petition is filed late. If this letter is addressed to both a husband and wife, and both want to petition the Tax Court, both must sign the petition or each must file a separate, signed petition.

If you dispute not more than \$10,000 for any one tax year, a simplified procedure is provided by the Tax Court for small tax cases. You can get information about this procedure, as well as a petition form you can use, by writing to the Clerk of the United States Tax Court at 400 Second Street NW., Washington, D.C. 20217. You should do this promptly if you intend to file a petition with the Tax Court.

If you decide not to file a petition with the Tax Court, we would appreciate it if you would sign and return the enclosed waiver form. This will permit us to assess the deficiency quickly and will limit the accumulation of interest. The enclosed envelope is for your convenience. If you decide not to sign and return the statement and you do not timely petition the Tax Court, the law requires us to assess and bill you for the deficiency after 90 days from the above mailing date of this letter (150 days if this letter is addressed to you outside the United States).

If you have any questions, please contact the person whose name and address are shown on the letter. If you write, please attach this letter to help identify your account. Keep the copy for your records. Also, please include your telephone number and the most convenient time for us to call, so we can contact you if we need additional information.

If you prefer, you may call the IRS contact person at the telephone number shown above. If this number is outside your local calling area, there will be a long distance charge to you.

You may call the IRS telephone number listed in your local directory. An IRS employee there will be able to help you, but the contact person at the address shown on this letter is most familiar with your case.

Thank you for your cooperation.

Sincerely yours,

Lawrence Gibbs

Commissioner
By

Donald Nuttall

District Director

Enclosures:
Copy of this letter
Statement
Envelope

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY
AT THE TIME OF FILMING. IF AND WHEN A
BETTER COPY CAN BE OBTAINED, A NEW FICHE
WILL BE ISSUED.

DEC 04 1987

Name, SSN or EIN, and Address of Taxpayer(s)

049-32-7803

Sheldon B Bufferd & Phyllis Bufferd

11 Oak Lane

Weston, CT 06880

Kind of Tax (Copy to Authorized Representative)

INCOME

Deficiency

Tax Year Ended	Increase in Tax	Penalties
December 31, 1975	\$3,069.00	\$153.45 Sec 6653(A)(1) IRC
December 31, 1976	\$3,704.00	\$185.20 Sec 6653(A)(1) IRC
December 31, 1977	\$6,291.00	\$314.55 Sec 6653(A)(1) IRC
December 31, 1978	\$13,859.00	\$692.95 Sec 6653(A)(1) IRC
December 31, 1979	\$12,555.00	\$627.75 Sec 6653(A)(1) IRC

See the attached explanation for the above deficiencies

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law.

Your

Signature

(Date signed)

Spouse's

Signature,

If A Joint

Return Was

Filed

(Date signed)

Taxpayer's

Representative

Sign Here

(Date signed)

Corporate

Name:

Corporate

Officers

(Signature)

(Title) (Date signed)

Sign Here

(Signature)

(Title) (Date signed)

Note: If you consent to the assessment of the amounts shown in this waiver, please sign and return it in order to limit the accumulation of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund. It will not prevent us from later determining, if necessary, that you owe additional tax; nor will it extend the time provided by law for either action.

If you later file a claim and the Internal Revenue Service disallows it, you may file suit for refund in a district court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.

Who Must Sign

If this waiver is for any year(s) for which you filed a

joint return, both you and your spouse must sign the original and duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

For a person acting in a fiduciary capacity (executor, administrator, trustee), file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

If you agree, please sign one copy and return it; keep the other copy for your records.

Sheldon B Bufferd & Phyllis Bufferd ATTACHMENT TO FORM 4089

8103

It is determined that part of the underpayment of tax for the taxable years ended December 31, 1975, 1976, 1977, 1978, & 1979 is due to negligence or intentional disregard of rules and regulations; therefore the five percent addition to the tax provided by section 6653(a) of the Internal Revenue Code of 1954 is asserted for that year.

9436

The entire underpayment of your income tax for the years 1975, 1976, 1977, 1978, & 1979 is a substantial underpayment attributable to tax motivated transactions under Section 6621(c) of the Internal Revenue Code.

Accordingly, the annual rate of interest payable on your income tax for the tax year 1975, 1976, 1977, 1978, & 1979 resulting from the substantial underpayment of tax attributable to tax motivated transactions shall be 120 percent of the adjusted rate established under Section 6621(b) of the Internal Revenue Code.

(0)

All or part of the underpayment of tax for the tax years 1975, 1976, 1977, 1978, and 1979 is attributable to a valuation overstatement. The amount of the underpayment due to the valuation overstatement is \$3,069.00, \$3,704.00, \$6,291.00, \$13,859.00, and \$12,555.00, respectively, and is attributable to the items marked (0) on the attached form 1902-B. Consequently, the 30 percent addition to the tax so attributable for that year is asserted, as provided by Section 6659 of the Internal Revenue Code.

Report of Individual
Income Tax Examination Changes

Department of the Treasury
Internal Revenue Service

Name of Taxpayer
SHELDON B + PHYLLIS BUFFORD

Name and Title of Person With Whom Changes Were Discussed

Year
7512

Form
1040

Filing Status
JOINT

In Reply Refer To:
ESP:ERC

Date of Report

Social Security Number
049-32-7803

Examining District
08

Income and Deduction Amounts Adjusted				
Explanation No. (See attached)	Item Changed	Amount Shown on Return or as Previously Adjusted	Corrected Amount of Income and Deduction	Adjustment Increase (Decrease)
# 1	1978 INVESTMENT CREDIT C/B	-	-	-
# 2	TAX MOTIVATED TRANSACTION	-	-	-
# 3	NEGLIGENCE	-	-	-

A. Adjustment in income-increase (decrease) (see explanation of adjustments attached)

B. Adjusted gross, taxable, or tax table income reported or as previously adjusted

C. Corrected adjusted gross, taxable, or tax table income

D. Tax computed with exemptions

E. Credit for personal exemptions

F. Tax credits (credit for the elderly, investment, foreign, or other allowable credits) (if adjusted, see explanation attached)

G. Other taxes (self-employment, minimum, alternative minimum, tax from recomputing prior year investment credit, advance earned income credit payments, etc.) (if adjusted, see explanation attached)

H. Corrected tax (line D less line E less line F plus line G)

I. Tax shown on return or as previously adjusted

J. Deficiency (increase in tax before credit adjustments - line H less line I)

K. Overassessment (decrease in tax before credit adjustments - line I less line H)

L. Adjustments to prepayment credits

M. Balance due - this does not include any interest charges (line J or K as adjusted by line L)

N. Overpayment - this does not include any interest due you (line J or K as adjusted by line L)

O. Penalties, if any (see explanation attached)

VALUATION OVERSTATEMENT 6659
NEG PENALTY 6653(A)(1)

920.70
153.45

Report of Individual
Income Tax Examination Changes

Department of the Treasury
Internal Revenue Service

Name of Taxpayer
SHELDON B + PHYLLIS BUFFORD

Name and Title of Person With Whom Changes Were Discussed

Year
7612

Form
1040

Filing Status
JOINT

In Reply Refer To:
ESP:ERC

Date of Report

Social Security Number
049-32-7803

Examining District
08

Income and Deduction Amounts Adjusted				
Explanation No. (See attached)	Item Changed	Amount Shown on Return or as Previously Adjusted	Corrected Amount of Income and Deduction	Adjustment Increase (Decrease)
# 1	1978 INVESTMENT CREDIT C/B + NEW JOBS CREDIT	-	-	-
# 2	TAX MOTIVATED TRANSACTION	-	-	-
# 3	NEGLIGENCE	-	-	-

A. Adjustment in income-increase (decrease) (see explanation of adjustments attached)

B. Adjusted gross, taxable, or tax table income reported or as previously adjusted

C. Corrected adjusted gross, taxable, or tax table income

D. Tax computed with exemptions

E. Credit for personal exemptions

F. Tax credits (credit for the elderly, investment, foreign, or other allowable credits) (if adjusted, see explanation attached)

G. Other taxes (self-employment, minimum, alternative minimum, tax from recomputing prior year investment credit, advance earned income credit payments, etc.) (if adjusted, see explanation attached)

H. Corrected tax (line D less line E less line F plus line G)

I. Tax shown on return or as previously adjusted

J. Deficiency (increase in tax before credit adjustments - line H less line I)

K. Overassessment (decrease in tax before credit adjustments - line I less line H)

L. Adjustments to prepayment credits

M. Balance due - this does not include any interest charges (line J or K as adjusted by line L)

N. Overpayment - this does not include any interest due you (line J or K as adjusted by line L)

O. Penalties, if any (see explanation attached)

VALUATION OVERSTATEMENT
NEG PENALTY 6653(A)(1)

185.20

Report of Individual
Income Tax Examination Changes

Department of the Treasury
Internal Revenue Service

Name of Taxpayer SHELDON B + PHYLLIS BUFFERD	Year 772	Form 1040	Filing Status JOINT	In Reply Refer To: ESP: EKC
Name and Title of Person With Whom Changes Were Discussed	Date of Report	Social Security Number 049-32-7803	Examining District 08	

Income and Deduction Amounts Adjusted

Explanation No. (See attached)	Item Changed	Amount Shown on Return or as Previously Adjusted	Corrected Amount of Income and Deduction	Adjustment Increase (Decrease)
# 1	INVESTMENT/JOBS CREDIT CARRYBACK FROM 1978+1979			
# 2	TAX MOTIVATED TRANSACTIONS			
# 3	NEGLIGENCE			

A. Adjustment in income-increase (decrease) (see explanation of adjustments attached)	
B. Adjusted gross, taxable, or tax table income reported or as previously adjusted	33572.00
C. Corrected adjusted gross, taxable, or tax table income	33572.00
D. Tax computed with exemptions	6621.00
E. Credit for personal exemptions	180.00
F. Tax credits (credit for the elderly, investment, foreign, or other allowable credits) (if adjusted, see explanation attached)	150.00
G. Other taxes (self-employment, minimum, alternative minimum, tax from recomputing prior year investment credit, advance earned income credit payments, etc.) (if adjusted, see explanation attached)	1379.00
H. Corrected tax (line D less line E less line F plus line G)	7670.00
I. Tax shown on return or as previously adjusted	1379.00
J. Deficiency (increase in tax before credit adjustments — line H less line I)	6291.00
K. Overassessment (decrease in tax before credit adjustments — line I less line H)	
L. Adjustments to prepayment credits	
M. Balance due — this does not include any interest charges (line J or K as adjusted by line L)	6291.00
N. Overpayment — this does not include any interest due you (line J or K as adjusted by line L)	
O. Penalties, if any (see explanation attached)	1887.30
VALUATION OVERSTATEMENT 6659 NEG PENALTY 6653(A)(1)	
	314.55

AND ADDRESS OF TAXPAYER: 1004 B & PHYLLIS BUFFERD 42 OLD ACADEMY ROAD STAFFIELD, CT 06430	DATE OF REPORT: SOC. SEC. NUMBER: 049-32-7803 FORM: 1040 YEAR: 1978 FILING STATUS: JOINT EXAMINING DISTRICT: 008 NAME OF EXAMINER: IN REPLY REFER TO: ESP: EKC
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EXPLANATION CHANGES	INCOME AND DEDUCTION AMOUNTS ADJUSTED	ADJUSTMENT INCREASE (DECREASE)
629 (T) PRINTER ASSOCIATES		8,950.00
511 SCHEDULE G		
221 (T) INVESTMENT TAX CREDIT		
308 TARGETED JOBS CREDIT		
418 CREDIT FOR PERSONAL EXEMPTIONS	(3,000.00)
103 PENALTIES		
436 TAX MOTIVATED TRANSACTIONS		
ADJUSTMENTS TO INCOME AND/OR DEDUCTIONS - INCREASE		5,950.00
PLUS TAX TABLE INCOME AS SHOWN ON RETURN		51,087.00
CORRECTED TAXABLE INCOME		57,037.00
TAX COMPUTED WITH 4 EXEMPTIONS TAX RATE SCHEDULE		19,034.00
GENERAL TAX CREDIT		180.00
LESS TAX CREDITS:		
INVESTMENT TAX CREDIT		21.00
TARGETED JOBS CREDIT		4,974.00
PLUS OTHER TAXES:		
SELF EMPLOYMENT TAX 1,434.00		
TOTAL OTHER TAXES		1,434.00
CORRECTED TAX CARRIED TO NEXT PAGE		15,293.00

NAME AND ADDRESS OF TAXPAYER: YELDON B & PHYLLIS BUFFORD
292 OLD ACADEMY ROAD
MIDDLETOWN, CT 06430
DATE OF REPORT: SOC. SEC. NUMBER: 049-32-7803
FORM: 1040
YEAR: 1978
FILING STATUS: JOINT
NAME AND TITLE OF PERSON WITH WHOM EXAMINING DISTRICT: 008
NAMES WERE DISCUSSED: NAME OF EXAMINER:
IN REPLY REFER TO: ESPI:KXC

CORRECTED TAX FROM PRECEDING PAGE	15,293.00
LESS TAX AS SHOWN ON RETURN	1,434.00
DEFICIENCY	13,859.00
BALANCE DUE	13,859.00
PENALTIES: NEGLECTANCE, SEC. 6653(A)(1) I.R.C.	692.95

NAME AND ADDRESS OF TAXPAYER: YELDON B & PHYLLIS BUFFORD
292 OLD ACADEMY ROAD
MIDDLETOWN, CT 06430
DATE OF REPORT: SOC. SEC. NUMBER: 049-32-7803
FORM: 1040
YEAR: 1978
FILING STATUS: JOINT
NAME AND TITLE OF PERSON WITH WHOM EXAMINING DISTRICT: 008
NAMES WERE DISCUSSED: NAME OF EXAMINER:
IN REPLY REFER TO: ESPI:KXC

EXPLANATION UNDERS	INCOME AND DEDUCTION AMOUNTS ADJUSTED	ADJUSTMENT INCREASE (DECREASE)
629 (T) PRINTER ASSOC		11,074.00
629 (T) CONPO FINANCIAL SER		1,918.00
221 (T) INVESTMENT TAX CREDIT		
418 CREDIT FOR PERSONAL EXEMPTIONS		(4,000.00)
103 PENALTIES		
436 TAX MOTIVATED TRANSACTIONS		
ADJUSTMENTS TO INCOME AND/OR DEDUCTIONS - INCREASE		8,992.00
PLUS TAX TABLE INCOME AS SHOWN ON RETURN		38,809.00
CORRECTED TAXABLE INCOME		47,801.00
TAX COMPUTED WITH 4 EXEMPTIONS	TAX RATE SCHEDULE	13,700.00
LESS TAX CREDITS: INVESTMENT TAX CREDIT		4.00
PLUS OTHER TAXES: SELF EMPLOYMENT TAX	1,490.00	
TOTAL OTHER TAXES		1,490.00
CORRECTED TAX CARRIED TO NEXT PAGE		15,186.00

NAME AND ADDRESS OF TAXPAYER:
SHeldon B & Phyllis Bufferd
511 OLD ACADEMY ROAD
WATERFIELD, CT 06430

DATE OF REPORT:
SOC. SEC. NUMBER: 049-32-7803
FORM: 1040
YEAR: 1979
FILING STATUS: JOINT
EXAMINING DISTRICT: 008
NAME OF EXAMINER:
IN REPLY REFER TO: **ESP: EKC**

CORRECTED TAX FROM PRECEDING PAGE	15,185.00
LESS TAX AS SHOWN ON RETURN	2,631.00
DEFICIENCY	12,555.00
BALANCE DUE	12,555.00
Penalties: Negligence, SEC. 6653(a)(1) I.R.C.	627.75

Sheldon B Bufferd & Phyllis Bufferd EXPLANATION OF ADJUSTMENTS

EXPLANATION OF ADJUSTMENTS

9629 7221

It is determined, from examination of the books and records of the partnership known as Printer Associates that your share of the distributive income or losses for the taxable years shown below is \$0.00 & \$24.00 (respectively). Since you reported losses in the amount of (\$8,950.00) & (\$11,050.00), your taxable income is increased by \$8,950.00 & \$11,074.00, computed as follows:

Year(s)	1978	1979
Ordinary net Income(loss) per Partnership return	(\$274,334.00)	(\$532,408.00)
Add Unallowable deductions		
1. Depreciation	\$263,158.00	\$526,316.00
2. Rent	\$1,080.00	\$1,500.00
3. Interest Expense	\$0.00	\$748.00
4. Amortization	\$0.00	\$556.00
5. All Other Deductions	\$10,096.00	\$4,004.00
Sub Total	\$0.00	\$716.00
Less: Expenses allowed to the extent of Income	\$0.00	\$0.00
Corrected Partnership Income (loss)	\$0.00	\$716.00
Your distributive share of corrected Partnership Income (loss)	\$0.00	\$24.00
Partnership Loss reported on your return	(\$8,950.00)	(\$11,050.00)
Increase in Income (loss)	\$8,950.00	\$11,074.00
	=====	=====

EXPLANATION OF PARTNERSHIP ADJUSTMENTS

Taxable Year(s) Ending December 31, 1978, 1979

1. It is determined that the claimed losses are disallowed because the venture is a sham which lacks economic substance and should be ignored as part of a scheme designed to inflate your income tax deductions. Alternatively, it is determined that the claimed losses are disallowed because you have not established they were incurred in a trade or business, an activity engaged in for profit or with respect to property held for the production of income. Alternatively, it is determined that the depreciation claimed on the partnership return of Printer Associates is not allowable because the basis in the technology has not been established, because it has not been established that the amount of depreciation claimed bears a proper relationship to a decline in the property's usefulness, and because the non-recourse note in the amount of \$4,535,000.00 lacks economic substance. Additionally, it has not been established that the partnership is entitled to any depreciation in the year 1978. Alternatively, it is determined that the amount of any non-recourse liability is too speculative and contingent to be included in any partner's basis.

2. It is determined that the investment tax credit claimed on your 1978 return and relating to the purchase rights of the M-Cell technology by Printer Associates is disallowed because it has not been established that the losses were incurred in a trade or business, an activity engaged in for profit or with respect to property held for the production of income. Alternativley, it is further determined that the credit is not allowable because it has not been established the property qualifies for the credit.

It is further determined that the following deductions are disallowed for the specific reasons stated:

1. Depreciation

- a. It is determined that the deduction attributable to depreciation is disallowed since the acquired assets do not have a determinable useful life.
- b. Alternatively, it is determined that the deduction attributable to depreciation is disallowed because the amount of depreciation does not bear a proper relationship to a decline in the acquired assets usefulness and, in any event, the fair market value of the M Cell technology has not been established.
- c. Alternatively, it is determined that the portion of the depreciation deduction attributable to the amount of the note(s) is disallowed because said note(s) lacks economic substance, and therefore, cannot be added to the cost or depreciable basis of the property.

3. Interest

- a. It is determined that your claimed interest deductions are disallowed since you have not established that the amounts claimed were in fact paid or properly accrued or were deductible in the year claimed.
- b. It is further determined that your claimed interest deductions are disallowed because the loan is contingent and not a present liability and because the loan transactions lack economic substance.

All Other Deductions

- a. It is determined that All Other Deductions are disallowed because you have not substantiated them or shown that they were incurred, or that they constitute ordinary and necessary business expenses. In addition, the amounts claimed are unreasonable and excessive.
- b. If it is determined that these deductions were in fact incurred, such expenditures are either for syndication or are capital in nature with an indeterminate useful life and are

therefore neither currently deductible or amortizable.

ALTERNATIVE POSITION

Alternatively, if it is decided that the disallowed partnership deductions are allowable in whole or in part, then it is determined that you are only entitled to deduct your proportionatrisk", suf the partnership loss which does not exceed your amount "at Code, subject to the provisions of Section 465 of the Internal Revenue Code.

9629

It has been determined that your distributive share of the ordinary income from Compo Financial Services Ltd. partnership which has an interest in Printer Associates is \$1418.00 in lieu of (\$500.00) reported on your return for the taxable year ending December 31, 1979. Therefore, your income is increased by \$1,918.00.

	1979
Printer Associates loss per return	(\$532,408.00)
add: adjustments	
Depreciation	\$526,316.00
Rent	\$1,500.00
Interest Expense	\$748.00
Amortization	\$556.00
Other deductions	\$4,004.00

Corrected Ordinary Income	\$716.00
	=====
Corrected distributive share of gain from Printer Assoc allocable to Compo Financial	\$292.13
Losses from Printer Assoc reported by Compo Financial	(\$107,106.87)

Increase in income to Partnership Compo Financial	\$107,399.00
	=====
Compo Financial loss per return	(\$102,973.00)
add: reduction of loss from Printer Assoc	\$107,399.00

Corrected partnership loss for Compo Financial	\$4,426.00
	=====
Compo Financial income claimed on your return	(\$500.00)
Your distributive share of corrected partnership income	\$1,418.00

Increase in income	\$1,918.00
	=====

EXPLANATION OF ADJUSTMENTS FOR PRINTER
ASSOCIATES FOR THE YEAR ENDED DEC 31,
1979

Sheldon B Bufferd & Phyllis Bufferd EXPLANATION OF ADJUSTMENTS

See the above for the explanation of adjustments for Printer Associates.

The adjustments flow from Printer Associates to Compo Financial Services and from Compo Financial Services to you per section 702 of the Internal Revenue Code.

7308

It is determined that your credit allocable to targeted jobs credit is \$4,974.00 in lieu of zero claimed on your 1978 tax return. Accordingly, your tax is reduced by \$4,974.00.

8511

Your tax has been recomputed using the tax rate schedule for 1978, since the Schedule "G" base period taxable incomes have not been substantiated.

7221 7308

It is determined that your credits allocable to investment tax credit carryback and targeted jobs credit carryback are reduced by \$3,069.00 for 1975, \$3,704.00 for 1976, and \$6,291.00 for 1977. Accordingly, your tax is increased by \$3,069.00 for 1975, \$3,704.00 for 1976, and \$6,291.00 for 1977. These adjustments flow from the adjustments to your 1978 and 1979 tax returns, see above.

A duplicate original is being mailed to you at the following addresses:

1242 Old Academy Road
Fairfield, Ct. 06430

and

30 Woodpecker Ln
Whispering Pines, NC 28327

and

11 Oak Lane
Weston, Ct 06880

and

11 Oak Lane
Weston, Ct 06883